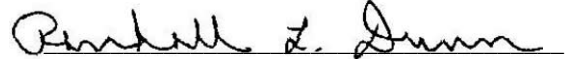


U.S. BANKRUPTCY COURT  
DISTRICT OF OREGON  
**FILED**

December 03, 2007

Clerk, U.S. Bankruptcy Court

Below is an Opinion of the Court.



RANDALL L. DUNN  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In Re:	)	Bankruptcy Case
	)	No. 06-30047-rld7
TORRIE RAY KELLETT,	)	
	)	
Debtor.	)	
_____	)	
In Re:	)	Bankruptcy Case
	)	No. 07-31645-tmb7
STEVEN DOUGLAS CORBIN,	)	
	)	MEMORANDUM OPINION
Debtor.	)	
_____	)	

These cases both were filed initially as chapter 13<sup>1</sup> cases but have been converted on the debtors' (collectively, "Debtors") respective motions to chapter 7. The cases are before me on the Debtors' Motions to Strike Requirement to File Official Form B22A in Conversion from Chapter

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<sup>1</sup> Unless otherwise indicated, all chapter, section and rule references are to the federal Bankruptcy Code, 11 U.S.C. §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9036, as enacted and promulgated as of October 17, 2005, the effective date of most of the provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), Pub. L. 109-8, 119 Stat. 23.

1 13 to Chapter 7 ("Motions"). As the legal issues raised in the Motions  
2 are the same, they are addressed together in this Memorandum Opinion.  
3 While the Motions request general relief from any requirement for debtors  
4 to file Official Form B22A ("Form B22A") in cases converted from chapter  
5 13 to chapter 7, I consider the Motions as each incorporating a request  
6 that the Debtors in these particular cases be excused from any  
7 requirement to file Form B22A, whatever I hold to be appropriate  
8 generally.

9 The Motions present issues that appear to be fairly limited and  
10 straightforward at face, but as with virtually all issues that have  
11 arisen in relation to interpretation of BAPCPA provisions, there is more  
12 to these matters than at first meets the eye. For the reasons stated  
13 below, I deny the Debtors' Motions to strike the general requirement to  
14 file Form B22A in cases converted from chapter 13 to chapter 7, but I  
15 grant the Motions to the extent of not requiring the Debtors in these  
16 particular cases to file Forms B22A.

#### 17 Factual Background

18 The following facts have been stipulated to between the Debtors  
19 and the United States Trustee ("UST") and/or are reflected on the dockets  
20 with respect to the cases before me, of which I take judicial notice.

21 In re Kellett, Case No. 06-30047-rld7:

22 Torrie Ray Kellett ("Kellett") filed a voluntary chapter 13  
23 petition in the bankruptcy court for the District of Oregon on  
24 January 11, 2006. Kellett's chapter 13 plan was confirmed by order of  
25 the court on March 20, 2006. Kellett moved to convert his case to  
26 chapter 7 on June 26, 2007. The court ordered the case converted to

1 chapter 7 the same day. The § 341(a) meeting in Kellett's chapter 7 case  
2 was held on August 2, 2007. The chapter 7 trustee filed a "no asset"  
3 report, or report of no distribution on August 7, 2007. The UST did not  
4 file a statement of presumed abuse within the ten (10) days following the  
5 § 341(a) meeting, as allowed under § 704(b). Kellett cooperated with the  
6 UST in providing documents requested by the UST in order to evaluate  
7 Kellett's 2006 income and the current earnings of Kellett and his non-  
8 filing spouse. The deadlines in Kellett's chapter 7 case for filing a  
9 complaint to object to discharge and for filing a motion to dismiss  
10 pursuant to § 707(b) expired on October 1, 2007. No party in interest  
11 filed such a complaint or motion.

12 In re Corbin, Case No. 07-31645-tmb7:

13 Steve Douglas Corbin ("Corbin") filed a voluntary chapter 13  
14 petition in the bankruptcy court for the District of Oregon on April 27,  
15 2007. Corbin did not confirm a plan in chapter 13. Corbin moved to  
16 convert his case to chapter 7 on June 25, 2007. Again, the court ordered  
17 the case converted to chapter 7 on the same day. The § 341(a) meeting in  
18 Corbin's chapter 7 case was held on August 2, 2007. The UST's attorney  
19 attended the § 341(a) meeting and asked Corbin questions regarding his  
20 circumstances. The chapter 7 trustee filed a "no asset" report, or  
21 report of no distribution on August 7, 2007. On August 13, 2007, the UST  
22 filed a statement pursuant to § 704(b)(1)(A) that Corbin's chapter 7 case  
23 should be presumed to be an abuse under § 707(b). Corbin cooperated with  
24 the UST in providing documents requested by the UST in order to evaluate  
25 Corbin's child support modification, certain bank transactions, bonuses  
26 and other compensation received by Corbin within the period of six months

1 preceding his bankruptcy filing, and information regarding Corbin's  
2 current earnings. On September 11, 2007, the UST issued a statement  
3 indicating that a motion to dismiss under § 707(b) was not appropriate in  
4 light of Corbin's financial circumstances. The deadlines in Corbin's  
5 chapter 7 case for filing a complaint to object to discharge and for  
6 filing a motion to dismiss pursuant to § 707(b) expired on October 1,  
7 2007. No party in interest filed such a complaint or motion.

#### 8 Jurisdiction

9 I have jurisdiction to consider and rule on the Motions as  
10 "core" matters under 28 U.S.C. §§ 1334 and 157(b)(2)(O).

#### 11 Discussion

12 These cases were filed after the BAPCPA effective date.  
13 Accordingly, the Debtors are subject to the "means test" provisions of  
14 the Bankruptcy Code, as amended. Under § 521(a)(1)(B)(v), chapter 7  
15 debtors are required to file a statement of their "monthly net income,  
16 itemized to show how the amount is calculated." This requirement is  
17 refined in two provisions of FRBP 1007(b). FRBP 1007(b)(1)(B) requires a  
18 debtor, except in chapter 9 cases, to file "a schedule of current income  
19 and expenditures"--the familiar pre-BAPCPA Schedules I and J. FRBP  
20 1007(b)(4) further requires, with an exception for disabled veterans,  
21 that,

22 an individual debtor in a chapter 7 case with  
23 primarily consumer debts shall file a statement of  
24 current monthly income prepared as prescribed by the  
25 appropriate Official Form, and, if the debtor has  
26 current monthly income greater than the applicable  
median family income for the applicable state and  
household size, the calculations in accordance with  
§ 707(b), prepared as prescribed by the appropriate  
Official Form.

1 The required Official Form in chapter 7 cases is Form B22A (Official Form  
2 No. 22A).

3 FRBP 1007(b)(6) requires chapter 13 debtors to file a statement  
4 of current monthly income with "a calculation of disposable income in  
5 accordance with § 1325(b)(3), prepared as prescribed by the appropriate  
6 Official Form." The required Official Form in chapter 13 cases is Form  
7 B22C (Official Form No. 22C).

8 Form B22A and Form B22C differ in a number of respects. For  
9 example,

10 joint debtors may complete a single Form B22C, but  
11 each joint debtor must complete a separate Form B22A;  
12 spousal income is treated differently in Form B22A and  
13 B22C; disabled veterans are permitted an exclusion in  
14 Form B22A, but not in Form B22C; Chapter 13 debtors  
15 may deduct administrative costs of the Chapter 13 case  
16 in Form B22C, Part IV, Line 33, but may not [deduct  
17 chapter 7 administrative costs] in Form B22A, Part V  
18 (see Line 28); and a debtor whose income is equal to  
the median income is treated differently for purposes  
of Section 1325(b)(4) in Form B22C, Part II, Line 17  
(debtor with income equal to [or greater than] median  
must propose five-year plan) than a debtor with the  
same income for purposes of Section 707(b)(7) in Form  
B22A, Part III, Line 15 (presumption of abuse does not  
apply to debtor whose income is equal to the median  
income).

19 In re Kerr, 2007 WL 2119291 at \*5 (Bankr. W.D. Wash. July 18, 2007).

20 Each of the Debtors filed a Form B22C in his chapter 13 case.

21  
22 1. Arguments as to why § 707(b) does not apply in converted cases

23 The Debtors argue that they are not required to file Forms B22A  
24 in their converted cases because they are not subject to a further "means  
25 test" under § 707(b). Specifically, they rely on the language of  
26 § 707(b)(1), which states that "the court, on its own motion or on a

1 motion by the [UST], trustee..., or any party in interest, may dismiss a  
2 case filed by an individual debtor under this chapter whose debts are  
3 primarily consumer debts...if it finds that the granting of relief would  
4 be an abuse of this chapter...." (emphasis added). They point out that  
5 their cases were converted to, but not filed in chapter 7. Thus, the  
6 "means test" provisions of § 707(b) are not triggered, and any  
7 requirement(s) of the FRBPs or local bankruptcy rules that the Debtors  
8 file Forms B22A in their converted cases are precluded as inconsistent  
9 with the provisions of the Bankruptcy Code itself.

10         The Debtors rely substantially on the bankruptcy court's  
11 decision in In re Fox, 370 B.R. 639 (Bankr. D.N.J. 2007), where the same  
12 legal issues were raised. In Fox, the bankruptcy court began its  
13 analysis with a review of statutory language, focusing on §§ 707(b),  
14 348(a) and (b), and 342(d). Noting that "[t]he Supreme Court has  
15 instructed that, 'when the statute's language is plain, the sole function  
16 of the court--at least where the disposition required by the text is not  
17 absurd--is to enforce it according to its terms'" (citing Lamie v. U.S.  
18 Trustee, 540 U.S. 526, 533 (2004)), the bankruptcy court in Fox found  
19 nothing ambiguous in Congress's use of the phrase "filed...under this  
20 chapter" in § 707(b)(1) and determined that § 707(b) did not apply to  
21 cases converted from another chapter. Id. at 642-43. The Fox court  
22 found particularly compelling that, although the remedies in a chapter 7  
23 case found to be an abuse specifically encompass dismissal or conversion  
24 to chapter 13 or 11, reflecting that the drafters had conversions in  
25 mind, § 707(b) only references cases filed under chapter 7, when the  
26 simple addition of the words "or converted to" chapter 7 would have

1 covered converted cases. Id. at 643, 646.

2         The Fox court found additional support for its interpretation  
3 of the language of § 707(b) in §§ 348(a) and (b). Section 348(a)  
4 provides that conversion of a bankruptcy case from one chapter to another  
5 "does not effect a change in the date of the filing of the petition, the  
6 commencement of the case, or the order for relief." Section 348(b)  
7 provides that "unless the court orders otherwise," the "order for relief  
8 under this chapter" in a converted case means "the conversion of such  
9 case to such chapter." In effect, § 348(a) provides that conversion does  
10 not commence a new bankruptcy case, but § 348(b) provides that a  
11 conversion generally effects an "order for relief" in the new chapter.  
12 If Congress had intended § 707(b) to apply to cases converted to chapter  
13 7, another way to make that intention clear would have been to reference  
14 the entry of "an order for relief" rather than filing under chapter 7.  
15 Id. at 646.

16         In addition, as noted by the Fox court, § 342(d) provides that,  
17 "[i]n a case under chapter 7 of this title in which the debtor is an  
18 individual and in which the presumption of abuse arises under section  
19 707(b), the clerk shall give written notice to all creditors not later  
20 than 10 days after the date of the filing of the petition that the  
21 presumption of abuse has arisen." (emphasis added). Unless a case is  
22 converted immediately from another chapter to chapter 7, such a notice  
23 will hardly ever be sent within ten days after the filing date in a  
24 converted case. Id. at 645.

25         Beyond the statutory interpretation arguments stated in Fox,  
26 other provisions of the Bankruptcy Code appear to differentiate the

1 conversion of a bankruptcy case from its filing. For example, § 1307(a)  
2 provides that a debtor may convert a case from chapter 13 to chapter 7 at  
3 any time, with the limitation under § 1307(g) that the debtor be eligible  
4 for relief under chapter 7. In chapter 11, § 1112(a) provides that a  
5 debtor may convert a chapter 11 case to chapter 7 unless:

- 6 (1) the debtor is not a debtor in possession;  
7 (2) the case originally was commenced as an  
8 involuntary case under this chapter; or  
9 (3) the case was converted to a case under this  
chapter other than on the debtor's request.

9 Consistent with § 1307(g), § 1112(f) limits the right of conversion to  
10 chapter 11 debtors who are eligible for relief in chapter 7. See G.E.  
11 Brunstad, Jr., "The Inapplicability of 'Means Testing' to Cases Converted  
12 to Chapter 7," 9 Am. Bankr. Inst. J. 1 (Nov. 2005).

13  
14 2. Arguments as to why § 707(b) does apply in converted cases

15 In opposition to the Motions, the UST argues that the Debtors'  
16 narrow interpretation of the term "filed" under chapter 7 in § 707(b) is  
17 flawed. The UST's statutory construction argument relies upon the  
18 importance of interpreting statutory language in context. In  
19 interpreting statutes, courts must "consider not only the bare meaning of  
20 the critical word or phrase, but also its placement and purpose" in the  
21 Bankruptcy Code. Holloway v. United States, 526 U.S. 1, 6 (1999).

22 [S]tatutory language cannot be construed in a vacuum.  
23 It is a fundamental canon of statutory construction  
24 that the words of a statute must be read in their  
context and with a view to their place in the overall  
statutory scheme.

25 Davis v. Michigan Dept. of Treas., 489 U.S. 803, 809 (1989) (citing  
26 United States v. Morton, 467 U.S. 822, 828 (1984)).



1           At the outset, the UST argues that throughout the Bankruptcy  
2 Code, provisions addressing the dismissal of a case refer to "a case  
3 under this chapter" without differentiating converted cases. See  
4 §§ 707(a), 930(a), 1112(b), 1208(b) and (c), and 1307(b) and (c). The  
5 addition of the intervening words "by an individual debtor" with the  
6 further addition of the phrase "whose debts are primarily consumer debts"  
7 in § 707(b) arguably just limits the debtors to whom a finding of "abuse"  
8 could apply.

9           The UST also argues that the Debtors simply interpret "filed"  
10 too narrowly. The bankruptcy court in In re Kerr agreed with the UST's  
11 position:

12           Webster's Dictionary defines "filed" as "to put or  
13 keep (e.g., papers) in useful order" or "to enter  
14 (e.g., a legal document) on public official record."  
15 Webster's II New Riverside University Dictionary 477  
16 (1988). Here, in the simplest sense, the debtors'  
17 cases were entered on the Court's docket under Chapter  
18 13 by the filing of petitions in bankruptcy. The  
19 cases are now entered on the Court's docket under  
Chapter 7 as a result of the debtors' filing motions  
for conversion. While the cases were filed under  
Chapter 13, they are now filed under Chapter 7. If  
Congress meant to limit the application of the means  
test to debtors who initially or originally filed a  
petition under Chapter 7, that would have been simple  
to articulate.

20 In re Kerr, 2007 WL 2119291 at \*3. See In re Ybarra, 359 B.R. 702, 705  
21 (Bankr. S.D. Ill. 2007). In a decision exploring the effect of a  
22 conversion in a prior case on the debtor's eligibility for discharge in a  
23 current case, the bankruptcy court noted in Ybarra:

24           While "filing" may denote the act of delivering a  
25 document to the court clerk to begin litigation, it  
26 applies as well to the delivery of documents for  
placement in the record throughout the course of  
litigation. Therefore, use of the term "filed" in

§ 1328(f) does not, alone, signify that the act of filing a bankruptcy petition or beginning a case is necessarily implicit in the phrase "case filed under." (emphasis in original).

Id.

The Kerr court also disagreed with the Fox court's interpretation of § 348.

As this Court reads Section 348,...the clear intent of the section is to retain the original filing date as the date of the "filing of the petition," "commencement of the case" or "order for relief" except in the circumstances provided for in subsections (b) and (c), where these terms are instead deemed to refer to the conversion date. Because Section 707(b) is not mentioned in either subsection (b) or (c) of Section 348, it follows that the original filing date is retained upon conversion, but the case is otherwise treated as if the debtor had originally filed under the converted chapter.

2007 WL 2119291 at \*3.

Section 348(c) provides that § 342 applies in converted cases “as if the conversion order were the order for relief.” Nothing in the language of § 348, however, makes clear how the clerk is supposed to send the notice of presumed abuse in a converted case pursuant to § 342(d) “not later than 10 days after the date of the filing of the petition.” As noted above, the Fox court emphasized the inconsistency (often, impossibility) of applying that time limitation to notices in a converted case as support for its interpretation that § 707(b) simply does not apply in cases converted to chapter 7. I tend to agree with the Kerr court that it more likely represents merely “sloppy drafting.” *Id.*<sup>2</sup>

2 When the § 341(a) meeting notice is sent by the clerk in a  
(continued...)

1           The UST generally argues that when the language of § 707(b) is  
2 analyzed in the overall context of the BAPCPA amendments to the  
3 Bankruptcy Code, Congress did not intend to limit examination of chapter  
4 7 cases for "abuse" solely to cases filed originally in chapter 7.  
5 Converted cases are subject to scrutiny for "abuse" as well. However,  
6 the abuse analysis is limited to apply solely to cases filed by  
7 individual debtors, whose debts are primarily consumer debts. The relief  
8 sought is a chapter 7 discharge, and the relief is the same, whether the  
9 case was filed originally in chapter 7 or was converted to chapter 7.  
10 From the UST's perspective, it does not make sense to be able to assert  
11 abuse with respect to a case initiated by a chapter 7 petition, while  
12 being denied that right in a converted case.

13           Interpreting § 707(b) as not applying in converted cases itself  
14 opens the door to abuses. A debtor seeking to avoid the chapter 7 "means  
15 test" and § 707(b) "abuse" scrutiny could file a petition in chapter 13  
16 and then turn around and convert the case to chapter 7. The bankruptcy  
17 court faced just such a situation in In re Perfetto, 361 B.R. 27 (Bankr.  
18 D.R.I. 2007). In Perfetto, the debtor filed a petition in chapter 13 on  
19 May 30, 2006. Two weeks later, "with no evidence or suggestion of a  
20 change of circumstances," she converted her case to chapter 7. Id. at  
21 28-29. When the bankruptcy court issued a notice and order requiring the  
22

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23           <sup>2</sup>(...continued)  
24 chapter 7 case, whether it originally was filed under chapter 7 or was  
25 converted to chapter 7, if the debtor has not yet filed a Form B22A, the  
26 clerk notes "insufficient information available" to determine if a  
presumption of abuse applies, with the possibility that the notice may be  
updated later if more information becomes available.

1 debtor to file Form B22A within 15 days, she objected, arguing that  
2 filing Form B22A only was required under § 707(b) in cases filed  
3 originally under chapter 7 and that it would be a useless act for her to  
4 file Form B22A because the Form B22C filed while her case was in chapter  
5 13 established that her income was below the state median. Id. Relying  
6 on decisions interpreting §§ 348(a) and 1328(f)(1) to hold that "filed  
7 under" refers to the chapter to which a case has been converted, the  
8 bankruptcy court in Perfetto interpreted § 707(b), "reading BAPCPA in its  
9 entirety regarding means testing," as requiring the debtor to file the  
10 Form B22A in her converted chapter 7 case. Id. at 30.

11 As further support for its position, the UST argues that the  
12 phrase "may dismiss a case filed by an individual debtor under this  
13 chapter whose debts are primarily consumer debts" in § 707(b) is not new  
14 to the Bankruptcy Code under BAPCPA, and there are pre-BAPCPA decisions  
15 in which the prior "substantial abuse" analysis was applied in converted  
16 cases under § 707(b), including a decision from this district. See,  
17 e.g., In re Morris, 153 B.R. 559, 563-65 (Bankr. D. Or. 1993)  
18 (substantial abuse analysis applied in a case converted to chapter 7 from  
19 chapter 13); In re Traub, 140 B.R. 286, 291 (Bankr. D.N. Mex. 1992)  
20 (substantial abuse analysis applied in a case converted to chapter 7 from  
21 chapter 11). However, the argument that the "filed...under this chapter"  
22 language in § 707(b) does not apply to converted cases apparently was not  
23 raised in either Morris or Traub. Consequently, their relevance as  
24 authorities is limited.

25 The UST also asserts that § 704(b)(1) expressly requires the  
26 UST to determine whether the § 707(b) presumption of abuse arises "with

1 respect to a debtor who is an individual in a case under this chapter  
2 [7]," without differentiating between cases originally filed in chapter 7  
3 and converted to chapter 7. In light of that requirement, the UST argues  
4 that "[t]his statutory scheme only makes sense if every individual  
5 Chapter 7 debtor is a potential abuser subject to the strictures of  
6 Section 707(b)(2)." (emphasis in original).

### 7 8 3. Evaluating the conflicting arguments

9 Legitimate points are made on both sides of this argument.  
10 However, interpreting the language of § 707(b) "holistically," see United  
11 Savings Assn. v. Timbers of Inwood Forest, 484 U.S. 365, 371 (1988), I  
12 ultimately am persuaded that the phrase "case filed by an individual  
13 debtor under this chapter" does not make appropriate sense viewed in  
14 isolation and must be interpreted to encompass cases converted to chapter  
15 7 from other chapters as well as cases filed originally in chapter 7. In  
16 light of use of the phrase "case under this chapter" without referring  
17 specifically to converted cases in other provisions of the Bankruptcy  
18 Code dealing with dismissal, I find that it is not dispositive that  
19 § 707(b) does not specifically reference converted cases. Providing for  
20 dismissal as a remedy to deal with abuse in individual consumer chapter 7  
21 cases was meant to encompass findings of abuse in cases converted to, as  
22 well as initially filed in, chapter 7.

23 My holding in this regard is consistent with the Supreme  
24 Court's decision in Marrama v. Citizens Bank of Massachusetts, 127 S.Ct.  
25 1105 (2007), in which the Supreme Court broadly interpreted the authority  
26 of bankruptcy courts "to prevent an abuse of process" under § 105(a) to

1 deny a "bad faith" debtor the right to convert his case from chapter 7 to  
2 chapter 13 pursuant to § 706(a). If it is appropriate to thwart a  
3 conversion from chapter 7 to another chapter of the Bankruptcy Code by an  
4 abusive debtor in spite of the clear language of § 706(a) generally  
5 allowing such conversions, it seems perversely inappropriate to deny  
6 abuse analysis of a debtor's chapter 7 case based upon the mere fact that  
7 it was converted to, rather than originally filed in chapter 7.

8         In making this determination, I am not blind to the fact that  
9 § 707(b) and its implementing rules, applied indiscriminately in  
10 converted cases, could lead to some unfortunate and incongruous results.  
11 For example, what happens if a debtor makes a good faith effort to  
12 succeed in chapter 13 but (as happens in many chapter 13 cases) cannot  
13 complete the obligations of a confirmed plan? If the case converts to  
14 chapter 7, the debtor faces "abuse" scrutiny under § 707(b). If the case  
15 is dismissed as an "abuse," the debtor may be left with no realistic  
16 remedy in bankruptcy. Or, if the case is reconverted to chapter 13,  
17 there is at least the possibility that the debtor could begin cycling  
18 through a perpetual "do loop" of failures in chapter 13, followed by  
19 brief tenures in chapter 7, followed by further reconversions to chapter  
20 13. The UST argues that in the good faith exercise of discretion in  
21 bringing § 707(b) motions to dismiss, such scenarios will not occur. I  
22 hope and expect that is the case.

23         In addition, since § 348(a) provides that conversion "does not  
24 effect a change in the date of the filing of the petition, the  
25 commencement of the case, or the order for relief," the Form B22A in a  
26 converted case is prepared based on the debtor's income averaged over the

1 six months preceding the month during which the debtor's original  
2 bankruptcy petition was filed. Since a chapter 13 case could convert at  
3 any time before completion of the plan, at least some conversions can be  
4 contemplated during the last month of the applicable commitment period,  
5 which may be in the 60th month after the filing date. It is questionable  
6 how meaningful an analysis based on "current monthly income" can be,  
7 considering income information that may be more than five years old.

8         However, if a filed Form B22A raises a presumption of abuse,  
9 § 707(b)(2)(B) allows debtors to rebut the presumption with a showing of  
10 "special," i.e., changed circumstances. In addition, in appropriate  
11 circumstances, I find that the requirement to file a Form B22A in a  
12 converted case can be waived. See, e.g., In re Edwards, 367 B.R. 921  
13 (Bankr. S.D. Ga. 2007).

14         In FRBP 1007(b)(1), the requirement to file a schedule of  
15 current income and expenditures can be eliminated, if "the court orders  
16 otherwise." The provision for such an order is not included in FRBP  
17 1007(b)(4), which encompasses Form B22A. However, the definition of  
18 "current monthly income" in § 101(10A) contemplates that at least in some  
19 cases, "the schedule of current income required by section  
20 521(a)(1)(B)(ii)" will not be filed.<sup>3</sup>

---

21  
22         <sup>3</sup> Section 101(10A) provides that:

23         The term 'current monthly income'--

24                 (A) means the average monthly income from all sources  
25                 that the debtor receives (or in a joint case the debtor  
26                 and the debtor's spouse receive) without regard to  
                  whether such income is taxable income, derived during  
                  the 6-month period ending on-

(continued...)

The UST argues that Form B22A should be required to be filed in every case converted to chapter 7, so that the notice of presumed abuse will be sent by the clerk's office, as required pursuant to § 342(d). However, as previously noted, the clerk's office only notes presumed abuse based on available information and consequently does not provide such notice in all cases.

In addition, as in these cases, the requirement to file Form B22A in a converted case will be waived only based on an order of the court, following the filing of an appropriately noticed motion. As reflected in the stipulated facts stated above, when the Debtors filed the Motions, the UST was alerted to investigate the current financial circumstances of the Debtors in each case and ultimately determined not to pursue an abuse determination as to either of the Debtors. With the deadlines to file either a complaint objecting to discharge or a § 707(b) motion to dismiss having passed in each of the Debtors' cases, no purpose would be served in these cases by requiring the Debtors to file Forms B22A. Therefore, I find it appropriate to waive the requirement that the Debtors file Forms B22A in their respective cases.

## Conclusion

Analyzing the language of § 707(b) in light of other provisions of the Bankruptcy Code and the purposes of the "means test" and "abuse"

<sup>3</sup>(...continued)

• • •

(ii) the date on which current income is determined by the court for purposes of this title if the debtor does not file the schedule of current income required by section 521(a)(1)(B)(ii) . . . .



1 analysis under BAPCPA, I find that § 707(b) applies in cases converted to  
2 chapter 7, as well as in cases originally filed in chapter 7. I find  
3 that debtors in such converted cases are generally required to file the  
4 Form B22A "Statement of Current Monthly Income and Means Test Calculation  
5 (Chapter 7)." Accordingly, I will deny the relief generally requested in  
6 the Motions. However, in appropriate cases, the requirement to file Form  
7 B22A can be waived, and I find it appropriate in these cases that the  
8 Debtors not be required to file Forms B22A.

9 The UST should file an order consistent with this Memorandum  
10 Opinion, approved as to form by counsel for the Debtors, within ten (10)  
11 days.

12  
13 ###

14 cc: Robert J Vanden Bos  
15 Ann K. Chapman  
16 Peter C. McKittrick  
17 U.S. Trustee  
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